

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 STANLEY JOHNSON,

5 Plaintiff,

6 v.

7 JERRY HOWELL, *et al.*,

8 Defendants.
9

Case No. 2:20-cv-00356-KJD-DJA

ORDER

10 This action began with a *pro se* civil rights complaint filed pursuant to 42 U.S.C. §
11 1983 by a former state prisoner. On February 21, 2020, this Court issued an order
12 denying the application to proceed *in forma pauperis* for prisoners as moot because
13 Plaintiff was no longer incarcerated. (ECF No. 3 at 1.) The Court ordered Plaintiff to file
14 a fully complete application to proceed *in forma pauperis* for non-prisoners or pay the full
15 filing fee of \$400 within thirty (30) days from the date of that order. (*Id.*) The thirty-day
16 period has now expired, and Plaintiff has not filed an application to proceed *in forma*
17 *pauperis* for non-prisoners, paid the full \$400 filing fee, or otherwise responded to the
18 Court's order.

19 District courts have the inherent power to control their dockets and "[i]n the
20 exercise of that power, they may impose sanctions including, where appropriate . . .
21 dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831
22 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure
23 to prosecute an action, failure to obey a court order, or failure to comply with local rules.
24 See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for
25 noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir.
26 1992) (affirming dismissal for failure to comply with an order requiring amendment of
27 complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal
28 for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of

1 address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming
2 dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421,
3 1424 (9th Cir. 1986) (affirming dismissal for lack of prosecution and failure to comply with
4 local rules).

5 In determining whether to dismiss an action for lack of prosecution, failure to obey
6 a court order, or failure to comply with local rules, the court must consider several factors:
7 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
8 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
9 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
10 See *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at
11 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

12 Here, the Court finds that the first two factors, the public's interest in expeditiously
13 resolving this litigation and the Court's interest in managing the docket, weigh in favor of
14 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of
15 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay
16 in filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air*
17 *West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring
18 disposition of cases on their merits—is greatly outweighed by the factors in favor of
19 dismissal discussed herein. Finally, a court's warning to a party that his failure to obey
20 the court's order will result in dismissal satisfies the "consideration of alternatives"
21 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779
22 F.2d at 1424. The Court's order requiring Plaintiff to file an application to proceed *in forma*
23 *pauperis* for non-prisoners or pay the full filing fee within thirty (30) days expressly stated:
24 "IT IS FURTHER ORDERED that if Plaintiff does not timely comply with this order,
25 dismissal of this action may result." (ECF No. 3 at 2.) Thus, Plaintiff had adequate
26 warning that dismissal would result from his noncompliance with the Court's order to file
27 an application to proceed *in forma pauperis* for non-prisoners or pay the full \$400 filing
28 fee within thirty (30) days.

1 IT IS THEREFORE ORDERED that this action is dismissed without prejudice
2 based on Plaintiff's failure to file an application to proceed *in forma pauperis* for non-
3 prisoners or pay the full \$400 filing fee in compliance with this Court's order dated
4 February 21, 2020.

5 IT IS FURTHER ORDERED that the Clerk of Court shall enter judgment
6 accordingly.

7 DATED: March 31, 2020

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10 KENT J. DAWSON
11 UNITED STATES DISTRICT JUDGE
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